

## CHAPTER 3

### PUBLIC PROCEEDINGS AND PUBLIC RECORDS

#### ACCESS TO PUBLIC PROCEEDINGS

##### Indiana Open Door Law

Board meetings are governed by the Open Door Law, IC 5-14-1.5. Under the Open Door Law all meetings of governing boards must be open to the public except for executive sessions.

**Executive Sessions.** IC 5-14-1.5-6.1(b) lists the circumstances under which an executive session may be held, including the following:

1. Where authorized by federal or state statute.
2. For discussion of strategy for: collective bargaining; initiation of litigation or litigation which is either pending or has been threatened specifically in writing; implementation of security systems; or purchase or lease of real property up to the time a contract or option to purchase or lease is executed by the parties.
3. To receive information about, and interview, prospective employees.
4. With respect to any employee's status or alleged misconduct.
5. For discussion of confidential records.
6. To discuss job performance evaluations of individual employees.

Final action on matters discussed in executive session must be taken at a meeting open to the public. Minutes of executive sessions must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The board must certify by a statement in its memoranda and minutes that it discussed no subject matter in the executive session other than the subject matter specified in the public notice. [IC 5-14-1.5-6.1]

##### Public Notice

Public notice of the date, time, and place of regular meetings, executive sessions, or rescheduled or reconvened meetings must be given at least 48 hours before the meeting (excluding Saturdays, Sundays, and legal holidays). Reconvened meetings may be held with less than 48 hours notice if the new date, time, and place is announced at the time of the original meeting and recorded in the minutes, and there is no change in the agenda. Public notice is given by posting a notice of the meeting at the office of the political subdivision and notifying all news media who have filed a written request to receive such notices. If an agenda is used, it should be posted at the entrance to the meeting place. Notice of regular meetings need be given only once each year unless the date, time or place is changed. In case of an emergency, the 48 hour requirement may be disregarded. [IC 5-14-1.5-5]

### Minutes

Memoranda (minutes) of the meeting shall include the following items:

1. Date, time, and place of the meeting;
2. Members present and absent;
3. The general substance of all matters proposed, discussed or decided; and
4. A record of all votes taken, by individual members if there is a roll call. The memoranda should be available to the public within a reasonable period of time after the meeting. [IC 5-14-1.5-4]

### ACCESS TO PUBLIC RECORDS [IC 5-14-3]

#### Public Policy

Access to public records is governed by IC 5-14-3. The official policy of the State is: "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." [IC 5-14-3-1]

#### Definition of Public Record

A public record is defined as any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material regardless of form or characteristics. [IC 5-14-3-2]

#### Request for Access to Public Records

Any person may inspect and copy the public records of a public agency during regular business hours. A request for inspection or copying must identify with reasonable particularity the record being requested; and be, at the discretion of the public agency, in writing or on a form provided by the public agency. No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. [IC 5-14-3-3(a)]

The public agency shall either: (a) provide the requested copies to the person making the request; or (b) allow the person to make copies on the political subdivision's equipment or on his own equipment. [IC 5-14-3-3(b)]

The denial of access to a public record is covered in IC 5-14-3-9.

### Access to Electronic Data Storage Systems

A public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. [IC 5-14-3-3(d)]

The public agency may adopt an ordinance or resolution prescribing the conditions under which a person who receives information on disk or tape may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of this information in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to the ordinance or resolution may be prohibited by the public agency from obtaining a copy or any further data. [IC 5-14-3-3 (e)]

A public agency may not enter into or renew a contract or an obligation (a) for the storage or copying of public records or (b) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute; if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records. [IC 5-14-3-3(f)]

### Enhanced Access

As an additional means of inspecting and copying public records, a public agency may provide enhanced access to public records maintained by the public agency. A public agency may provide a person with enhanced access to public records if any of the following apply:

1. The public agency provides enhanced access to the person through its own computer gateway and provides for the protection of public records.
2. The public agency has entered into a contract with a third party under which the public agency provides enhanced access to the person through the third party's computer gateway or otherwise, and the contract between the public agency and the third party provides for the protection of public records.

A contract entered into under this section and any other provision of enhanced access must provide that the third party and the person will not engage in the following:

1. Unauthorized enhanced access to public records.
2. Unauthorized alteration of public records.
3. Disclosure of confidential public records.

A contract entered into under this section or any provision of enhanced access may require the payment of a reasonable fee to either the third party to a contract or to the public agency, or both, from the person.

A public agency may provide enhanced access to public records through the computer gateway administered by the Intelnet Commission established under IC 5-21-2. [IC 5-14-3-3.6]

### Records Which May Be Excepted From Disclosure

Pursuant to IC 5-14-3-4(b), the following public records may be excepted from the disclosure requirements if the governing board approves a policy to that effect:

1. Personnel files of employees and files of applicants for employment, except for:
  - a. The name, compensation, job title, business address, business telephone number, job descriptions, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the public agency;
  - b. Information relating to the status of any formal charges against the employee; and
  - c. Information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. General personnel information on all employees or for groups of employees, without individual names, may not be excepted from disclosure.

2. Administrative or technical information that would jeopardize a record keeping or security system.
3. Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.
4. Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1.
5. The identity of a donor of a gift made to a public agency if the donor requires nondisclosure of his identity as a condition of making the gift; or after the gift is made, the donor, or the donor's family, requests nondisclosure.

Names and addresses of employees may not be disclosed by the political subdivision to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes. [IC 5-14-3-4(c)]

### Fees

The governing board shall establish a fee schedule for the certification, copying, or facsimile machine transmission of documents. The fee may not exceed the actual cost of certifying, copying, or facsimile transmission of the document by the agency and the fee must be uniform throughout the public agency and uniform to all purchasers. "Actual Cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment, and does not include labor costs or overhead costs.[IC 5-14-3-8(d)]

## PRESERVATION AND DESTRUCTION OF RECORDS

### Suggested Procedures

We suggest that the hospital board adopt a formal records retention and destruction policy. The policy should adequately describe the records to be retained, the length of time to be retained, and the method of disposition. The policy should be designed to comply with the records retention requirements of the various federal, state, and local agencies. The hospital attorney should be consulted to ensure that all legal requirements are met.

A pamphlet entitled "Guide for Preservation and Destruction of Local Public Records" published by the State Commission on Public Records will be furnished upon request and may be used for reference in establishing a records retention policy.

### Public Records Retention - Audit

No financial records or records relating thereto are to be destroyed until the audit of the records by the State Board of Accounts has been completed, report filed, and any exceptions set out in the report satisfied.

Supporting documentation such as receipts, cancelled checks, invoices, bills, contracts, etc., must be available for audit to provide supporting information for the validity and accountability of monies disbursed.